



## Saint Paul Planning Commission

City Hall Conference Center Room 40  
15 Kellogg Boulevard West

### Steering Committee Meeting – 8:00 a.m., Room 41

Christopher B. Coleman,  
Mayor

#### Agenda

Saint Paul  
Planning Commission

August 24, 2012  
8:30 – 11:00 a.m.

Chair  
Barbara A. Wenzl  
First Vice Chair  
Elizabeth Reveal  
Second Vice Chair  
Paula Merrigan  
Secretary  
Daniel Ward II

Pat Connolly  
Daniel Edgerton  
Gene Gelgelu  
Bree Halverson  
William Lindeke  
Gaius Nelson  
Rebecca Noecker  
Christopher Ochs  
Trevor Oliver  
Julie Perrus  
Marilyn Porter  
Tony Schertler  
Emily Shively  
Robert Spaulding  
Terri Thao  
Jun-Li Wang  
David Wickiser

Planning Director  
Donna Drummond

**I. Approval of minutes of August 10, 2012.**

**II. Chair's Announcements**

**III. Planning Director's Announcements**

**IV. Zoning Committee**

**SITE PLAN REVIEW** – List of current applications. *(Tom Beach, 651/266-9086)*

**NO BUSINESS**

**V. Comprehensive Planning Committee**

**VI. Neighborhood Planning Committee**

Community Residential Facilities Zoning Study – Approve resolution initiating study.  
*(Patricia James, 651/266-6639)*

Nonconforming Use Text Amendments – Approve resolution recommending adoption of nonconforming use text amendments by the Mayor and City Council. *(Patricia James, 651/266-6639)*

District del Sol Plan – Recommendation to release for public review and set public hearing for October 5, 2012. *(Kate Reilly, 651/266-6618)*

**VII. Transportation Committee**

Lilydale Regional Park-Roadway, Trail and Environmental Clean Up - Approve resolution recommending the roadway, trail, and environmental clean up plans for Lilydale Regional Park. *(Christina Morrison, 651/266-6546)*

Charles Avenue Project – Approve resolution recommending the project to the Mayor and City Council. *(Christina Morrison, 651/266-6546)*

**VIII. Communications Committee**

**IX. Task Force/Liaison Reports**

**X. Old Business**

**XI. New Business**

**XII. Adjournment**

Information on agenda items being considered by the Planning Commission and its committees can be found at [www.stpaul.gov/ped](http://www.stpaul.gov/ped), click on Planning.

Planning Commission Members: PLEASE call Sonja Butler, 651/266-6573, if unable to attend.

**Saint Paul Planning Commission &  
Heritage Preservation Commission**  
MASTER MEETING CALENDAR

**WEEK OF AUGUST 20-24, 2012**

**Mon (20)** \_\_\_\_\_

**Tues (21)** \_\_\_\_\_

**3:30- Comprehensive Planning Committee**  
**5:00 p.m. (Merritt Clapp-Smith, 651/266-6547)**

**HAS BEEN CANCELLED**

**Weds (22)** \_\_\_\_\_

**Thurs (23)** \_\_\_\_\_

**5:00 p.m. Heritage Preservation Commission**

**Room 40 City Hall**  
Lower Level  
Enter building on 4<sup>th</sup> Street  
15 W. Kellogg Blvd.

**Public Hearings**

**1824 Marshall Avenue, Heritage Preservation Site**, by Charles Thompson Memorial Hall Board of Trustees, for an After-the-Fact review to infill of the window openings at the front porch. File #12-039 (*Spong, 651/266-6714*)

**888 W. Seventh Street, Jacob Schmidt Brewing Company Historic District**, by Bruce Knutson Architects, for a building permit to construct a new wall, entrances and parking lot after the demolition of a portion of the non-historic Warehouse Annex. File #12-043 (*Spong, 651/266-6714*)

**201 Fourth Street E., Lowertown Historic District**, by Signminds Inc., for a sign permit to install a lit sign on the Fourth Street elevation to read "STATION 4". File #12-040 (*Boulware, 651/266-6715*)

**216-218 Bates Avenue, Dayton's Bluff Historic District**, by Karen Gjerstad, architect, for a building permit to rehabilitate the historic Schorenstein Garage into housing. File #12-041 (*Boulware, 651/266-6715*)

**208-210 Bates Avenue, Dayton's Bluff Historic District**, by Karen Gjerstad, architect, for a building permit to rehabilitate the historic Schacht Building into housing. File #12-042 (*Boulware, 651/266-6715*)

**Fri (24)**

**8:00 a.m. Planning Commission Steering Committee**  
(Donna Drummond, 651/266-6556)

**Room 41 City Hall**  
Conference Center  
15 Kellogg Blvd.

**8:30- Planning Commission Meeting**  
**11:00 a.m.** (Donna Drummond, 651/266-6556)

**Room 40 City Hall**  
Conference Center  
15 Kellogg Blvd.

**Zoning..... SITE PLAN REVIEW** – List of current applications. (Tom Beach, 651/266-9086)

**NO BUSINESS**

***Neighborhood Planning***

***Committee.....*** Community Residential Facilities Zoning Study – Approve resolution initiating study.  
(Patricia James, 651/266-6639)

Nonconforming Use Text Amendments – Approve resolution recommending adoption of nonconforming use text amendments by the Mayor and City Council.  
(Patricia James, 651/266-6639)

District del Sol Plan – Recommendation to release for public review and set public hearing for October 5, 2012. (Kate Reilly, 651/266-6618)

***Transportation Committee.....*** Lilydale Regional Park-Roadway, Trail and Environmental Clean Up – Approve resolution recommending the roadway, trail, and environmental clean up plans for Lilydale Regional Park. (Christina Morrison, 651/266-6546)

Charles Avenue Project – Approve resolution recommending the project to the Mayor and City Council. (Christina Morrison, 651/266-6546)

**Saint Paul Planning Commission  
City Hall Conference Center  
15 Kellogg Boulevard West**

**Minutes August 10, 2012**

A meeting of the Planning Commission of the City of Saint Paul was held Friday, August 10, 2012, at 8:30 a.m. in the Conference Center of City Hall.

**Commissioners Present:** Mmes. Merrigan, Perrus, Reveal, Shively, Thao, Wang, Wencl; and Messrs. Connolly, Edgerton, Gelgelu, Lindeke, Ochs, Oliver, Schertler, Spaulding, and Ward.

**Commissioners Absent:** Mmes. \*Noecker, \*Porter, and Messrs. \*Nelson, \*Wickiser.  
\*Excused

**Also Present:** Donna Drummond, Planning Director; Lucy Thompson, Patricia James, Kate Reilly, Christina Morrison, Mary Matze and Sonja Butler, Department of Planning and Economic Development staff.

**I. Approval of minutes June 29, 2012.**

**MOTION:** *Commissioner Reveal moved approval of the minutes of June 29, 2012. Commissioner Lindeke seconded the motion. The motion carried unanimously on a voice vote.*

**II. Chair's Announcements**

Chair Wencl announced that five commissioners had attended the recent Mississippi Watershed Management Organization tour and it was very informative. She had been on the Saint Paul portion about 2 ½ years ago and this was an interesting update on the Minneapolis side of the river. They were not able to get up to the Coon Rapids dam area, because the water level was low, but it was very interesting and she thinks that they all learned something and it was a beautiful night to do that.

**III. Planning Director's Announcements**

Donna Drummond reported that the City Council approved a resolution asking the Planning Commission to do a West Grand Avenue Zoning Study, to look at zoning on Grand Avenue between Cretin and Fairview. This is in partial response to the student apartment development at Grand and Finn. There is also a moratorium attached to the zoning study, but anything that has received site plan approval already is exempt.

A summary of the Urban Land Institute's Navigating the New Normal workshop session was distributed, which City Councilmembers and some of the Commissioners attended on July 17<sup>th</sup>. It's a summary from ULI about the major points that were made at that session about the future of development opportunities in Saint Paul. She invited any of the commissioners who would like a

recording of the session to let her know.

Finally, the Volunteers of America's conditional use permit that was approved by the Planning Commission for 1394 Jackson was appealed by the District 6 Planning Council. The appeal was granted so the conditional use permit was denied.

#### **IV. Zoning Committee**

**STAFF SITE PLAN REVIEW** – List of current applications. *(Tom Beach, 651/266-9086)*

Five items to come before the Site Plan Review Committee on Tuesday, August 14, 2012:

- Remo Convenience Store, pump relocation at 1200 Rice Street.
- Bang Brewery, new micro brewery building at 2320 Capp Road.
- Form A Feed Fertilizer Facility, new storage building with overhead conveyor to river dock at 637 Barge Channel Road.
- Treacy Car Wash, demo building and build 3,000 sq. ft. car wash and parking lot at 1588 Energy Park Drive.
- Schmidt Bottling Warehouse Annex, parking lot and building reconstruction at 888 7<sup>th</sup> Street West.

#### **OLD BUSINESS**

#12-065-215 Providence Development LLC – Enlargement of the upper two units of a nonconforming 4-plex into unfinished attic space. 890 Goodrich Avenue between Victoria and Milton. *(Mary Matze, 651/266-6708)*

***MOTION:*** *Commissioner Reveal moved the Zoning Committee's recommendation to deny the enlargement of the upper two units of the nonconforming 4-plex at 890-892 Goodrich. The motion carried unanimously on a voice vote.*

#### **NEW BUSINESS**

#12-079-791 Juliette Cherbuliez – Establishment of legal nonconforming status as a duplex. 2343 Carter Avenue between Gordon and Keston. *(Mary Matze, 651/266-6708)*

***MOTION:*** *Commissioner Reveal moved the Zoning Committee's recommendation to approve the establishment of legal nonconforming use subject to additional conditions. The motion carried unanimously on a voice vote.*

#12-083-282 Pastor Irene Stockett – Conditional Use Permit for transitional housing with up to 6 residents, including the owner. 1093 Edgerton Street between Jessamine and Magnolia. *(Kate Reilly, 651/266-6618)*

***Commissioner Reveal announced that this case has been withdrawn by the applicant.***

Commissioner Reveal announced that the next Zoning Committee meeting on Thursday, August 16, 2012 has been cancelled.

**V. Comprehensive Planning Committee**

Great River Passage Master Plan – Recommendation to release for public review and set public hearing for September 21, 2012. (*Lucy Thompson, 651/266-6578*)

Lucy Thompson, PED staff, gave background on the Great River Passage Master Plan, including planning precedents; key principles guiding the vision, goals and objectives; the planning process; previous action by the Saint Paul Parks and Recreation Commission; and the Planning Commission's role in adoption of appropriate sections of the Master Plan as an amendment to the Saint Paul Comprehensive Plan. The full Master Plan, which includes recommendations on specific projects (with budgets assigned), on-going funding and administrative changes in the Parks and Recreation Department to oversee implementation of the Plan, has also been recommended by the Parks Commission to the Mayor and City Council. The essential idea is that all of the land along the Mississippi River in Saint Paul is one great river park, branded as the Great River Passage. Building out the Great River Passage system as a connected series of individual park spaces, and designing them to be amenities for adjacent private development is at the heart of the Master Plan.

Commissioner Ochs asked how is this going to be pulled into the Comprehensive Plan, because he is not familiar with the parameters and how they make changes to the Comprehensive Plan.

Ms. Thompson stated that it is important to have some portion of the larger Great River Passage Master Plan as part of the official Comprehensive Plan so that it can guide public and private investment in the Great River Passage. The Planning Commission should be reviewing the vision, goals and objectives of the GRP Plan in light of their consistency with the Comprehensive Plan. If there are inconsistencies, the Commission may recommend amending either the GRP Comprehensive Plan or the relevant existing Comprehensive Plan language to achieve consistency.

Commissioner Ochs said that he believes there are differences between the Comprehensive Plan and the Great River Passage (GRP) document regarding, for example, the loss of industrial space along the river.

Ms. Thompson said that the general concept in the Great River Passage document is to retain industrial uses that require a river location; this is consistent with the Mississippi River Corridor Plan chapter of the Comprehensive Plan. However, if there are locations where the Commission believes this goal is not being followed, it should comment.

Commissioner Edgerton said the principles "more urban" and "more natural" can conflict, and asked how the GRP document balances these two principles.

Ms. Thompson said that is the basic philosophy to balance them. As you look at the goals and objectives for each reach, you will see that one or the other principle tends to dominate. For example, in the Gorge Reach, the goals and objectives emphasize "more natural," since it is a

largely undisturbed landscape. In the Downtown Reach, on the other hand, which is already highly urbanized, the goals and strategies emphasize “more urban.”

Commissioner Schertler asked whether a specific park improvement proposal would have to come back through the Planning Commission. As he understands the document, these are conceptual plans for improvements to parks within the Passage, and approving the Comprehensive Plan amendment does not automatically approve specific projects.

Ms. Thompson replied that, generally, Parks projects do not come to the Planning Commission. They go through typical site plan review, where conformance with the Comprehensive Plan is considered. However, the Planning Commission, a district council or other party can always request that the Planning Commission review a site plan, which would bring it back before the Commission.

Commissioner Schertler noted that the document recommends improvements on private property – e.g. the Island Station site – that may be in conflict with what a private property owner intends. The Comprehensive Plan could be amended to reflect a different future use than that proposed in the GRP amendment.

Ms. Thompson responded that this situation is not unlike any other plan, where the City plans for land it does not own. If the existing property owner wants to do something different with the site, the Planning Commission would have to consider the options at the time an alternative proposal comes forward.

**MOTION:** *Commissioner Merrigan moved on behalf of the Comprehensive Planning Committee to release the draft for public review and set a public hearing on September 21, 2012. The motion carried unanimously on a voice vote.*

Commissioner Merrigan announced the next Comprehensive Planning Committee meeting on Tuesday, August 21, 2012 is cancelled.

## **VI. Neighborhood Planning Committee**

Near East Side Roadmap and Near East Side Rezoning Study – Approve resolution recommending to the Mayor and City Council adoption of the Roadmap and approval of the proposed property rezoning. (Kate Reilly, 651/266-6618)

Commissioner Oliver noted that the City Council did approve a \$500,000 STAR Grant for the group that is working to implement this roadmap. They received the grant and everyone is very excited about it.

**MOTION:** *Commissioner Oliver moved on behalf of the Neighborhood Planning Committee to recommend approval of the resolution and forward to the Mayor and City Council for adoption of the Roadmap and approval of the proposed property rezoning. The motion carried unanimously on a voice vote.*

Commissioner Oliver announced the items on the agenda for the next Neighborhood Planning Committee meeting on Wednesday, August 15, 2012.

**VII. Transportation Committee**

District 1 Transportation Plan – Approve resolution recommending to the Mayor and City Council adoption of this amendment to the District 1 Plan. (*Christina Morrison, 651/266-6546*)

Commissioner Spaulding reported that the Transportation Committee met and reviewed the plan. He noted that the public hearing was held in June, and that there was one letter of support from the District 1 Community Council.

**MOTION:** *Commissioner Spaulding moved on behalf of the Transportation Committee to recommend approval of the resolution and forward to the Mayor and City Council for adoption of this amendment to the District 1 Plan. The motion carried unanimously on a voice vote.*

Commissioner Spaulding announced the items on the agenda for the next Transportation Committee meeting on Monday, August 13, 2012.

**VIII. Communications Committee**

Commissioner Thao had no report.

**IX. Task Force Reports**

Commissioner Schertler announced that the Ford Site Planning Task Force will be meeting Monday, August 13, 2012 at 6:30 p.m. in the Gloria Dei Lutheran Church located at 700 Snelling Avenue South, Saint Paul. The agenda item is a report from the Ford Zoning Study consultants on research and preliminary findings regarding zoning tools.

**X. Old Business**

None.

**XI. New Business**

None.

**XII. Adjournment**

Meeting adjourned at 9:16 a.m.

Recorded and prepared by  
Sonja Butler, Planning Commission Secretary  
Planning and Economic Development Department,  
City of Saint Paul

Respectfully submitted,



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Donna Drummond  
Planning Director

Approved \_\_\_\_\_  
(Date)

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Daniel Ward, II  
Secretary of the Planning Commission

PED\butler\planning commission\minutes\August 10, 2012

**REVISED**  
**SITE PLAN REVIEW COMMITTEE**  
**Tuesday, August 14, 2012**  
**2nd Floor Conference Room**  
**375 Jackson Street, Suite 218**

<u>Time</u>	<u>Project Name and Location</u>
9:00	Remo Convenience Store Pump relocation 1200 Rice St. (C.Tilley)
9:30	Bang Brewery New micro brewery building 2320 Capp Rd. ((L.Zangs))
<del>10:15</del>	<del>Form A Feed Fertilizer Facility TO BE RESCHEDULED</del> <del>New storage building with overhead conveyor to river dock</del> <del>637 Barge Channel Rd (L. Zangs)</del>
11:00	Treacy Car Wash Demo building and build 3,000 sq ft car wash and parking lot 1588 Energy Park Drive (C. Tilley)
11:45	Schmidt Bottling Warehouse Annex Parking lot & building reconstruction 888 7 <sup>th</sup> St. W (C. Tilley)

**Applicants should plan to attend this meeting.**

At this meeting you will have a chance to discuss the site plan for your project with Saint Paul's Site Plan Review Committee. The Committee is made up of City staff from Zoning, Traffic, Sewers, Water, Public Works, Fire, and Parks. You are encouraged to bring your engineer, architect, or contractor with you to handle any technical questions raised by city staff. The purpose of this meeting is to simplify the review process by letting the applicant meet with staff from a number of departments at one time. Staff will make comments and ask questions based on their review of the plans. By the end of the meeting you will know if the site plan can be approved as submitted or if revisions will be required. Staff will take minutes at the meeting and send you a copy.

**Parking**

A few free parking spaces are available in our visitor parking lot off of 6<sup>th</sup> Street at Jackson. Parking is also available at on-street meters. The closest parking ramp is on Jackson one block south of our office between 4<sup>th</sup> and 5<sup>th</sup> Street.

If you have questions, please contact Corinne Tilley at 651-266-9085 or [Corinne.Tilley@ci.stpaul.mn.us](mailto:Corinne.Tilley@ci.stpaul.mn.us).

**The Zoning Committee  
meeting for Thursday,  
August 16, 2012  
was  
CANCELLED**

**The next Zoning  
Committee meeting  
will be on Thursday,  
August 30, 2012.**

**Thank you**



**CITY OF SAINT PAUL**  
*Christopher B. Coleman, Mayor*

*25 West Fourth Street  
Saint Paul, MN 55102*

*Telephone: 651-266-6626  
Facsimile: 651-228-3341*

Date: August 16, 2012  
To: Planning Commission  
From: Neighborhood Planning Committee  
Re: Community Residential Facilities  
Study Initiation

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**Background**

Staff from PED and DSI have been working the last two years on updating regulations in the Saint Paul Zoning Code. A previous study from 1990s revised regulations so that definitions were closely tied to specific state programs. Because these programs frequently changed, the current zoning code has become outdated.

**Committee Recommendation**

Staff is close to having a recommendation for the planning commission to start reviewing. Therefore, the Committee is asking that the Planning Commission recommend approval of the attached resolution.

**Attachments:**

1. Resolution to initiate a Zoning Study on Community Residential Facilities

city of saint paul  
planning commission resolution  
file number  
date

COMMUNITY RESIDENTIAL FACILITY STUDY INITIATION

WHEREAS, the current zoning code includes definitions of community residential facilities, and other congregate living facilities that are closely tied to specific State programs which frequently change; and

WHEREAS, the current zoning code has thus become outdated in defining such congregate living facilities; and

WHEREAS, inconsistencies between the standards and conditions of congregate living facilities have been identified; and

WHEREAS, recent zoning cases have identified a need for clearer definitions for community residential facilities and other congregate living facilities;

NOW, THEREFORE, BE IT RESOLVED, under provisions of Section 61.801(b) of the Legislative Code, that the Planning Commission initiates a zoning study to consider amendments to the zoning code pertaining to community residential facilities and other congregate living facilities in response to the outdated definition of such facilities and the need for consistency of standards and conditions between such facilities within the zoning code.

moved by \_\_\_\_\_  
seconded by \_\_\_\_\_  
in favor \_\_\_\_\_  
against \_\_\_\_\_



**CITY OF SAINT PAUL**  
Christopher B. Coleman, Mayor

25 West Fourth Street  
Saint Paul, MN 55102

Telephone: 651-266-6700  
Facsimile: 651-228-3220

**TO:** Planning Commission  
**FROM:** Neighborhood Planning Committee  
**DATE:** August 16, 2012  
**RE:** Nonconforming Use Zoning Text Amendments Study – Recommendations

### **Background**

In 2004 and 2005 the Minnesota Legislature adopted changes to Minnesota Statutes Sec. 462.357 regarding nonconforming uses. Local zoning provisions for continuation of structures and uses made nonconforming by adoption of an additional zoning control are governed by, and must be consistent with, the provisions in Minnesota Statutes Sec. 462.357 for such legal nonconforming uses. Minnesota Statutes Sec. 642.357, Subd. 1e, specifically allows legal nonconforming uses to *"be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless: (1) the nonconformity or occupancy is discontinued for a period of more than one year; or (2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, and no building permit has been applied for within 180 days of when the property was damaged."*

While the City zoning staff have been complying with these changes since their adoption, the language in Saint Paul's zoning code differs from the statute and must be updated. The zoning study also provides an opportunity to correct minor errors, clarify language, and incorporate zoning administrator interpretations into the text of the code.

The draft amendments also propose changes to the consent petition requirement for those nonconforming use permits where they are now required.

Finally, amendments to the special sign district plans in Chapter 64 are proposed to reflect the new statutes and to eliminate repetitive language.

### **Actions to Date**

On April 23, 2010, the Planning Commission adopted resolution 10-43 initiating a study to consider amendments to the Zoning Code regarding the regulation of nonconforming lots, structures and uses found in Chapter 62, as well as nonconforming signs found in Chapter 64.

On February 24, 2012, the Commission released a public review draft and set the public hearing for April 20, 2012.

Four people testified in person at the public hearing, and four letters were received. All of the testimony was related to the proposed changes to the consent petition requirements for nonconforming use permits in Sec. 62.109; none of the other amendments elicited any testimony.

After the hearing, the amendments and testimony were referred back to the Neighborhood Planning Committee for further consideration. Because all the testimony related to the consent petition requirements, the Committee focused on these issues.

The Committee met on June 20, July 18, and August 15, 2012, to discuss the testimony and consent petition issues. While the testimony specifically addressed only those applications that seek to reestablish a nonconforming use that has been vacant for more than a year, not the other cases where consent petitions are required, the committee recommends that all petition requirements be consistent. The oral and written testimony opposed to making any change can be summarized as follows: requiring the consent of two-thirds of the surrounding properties' owners ensures the right of neighboring property owners and neighborhood councils to control what happens in reestablishing nonconforming uses in their neighborhoods and ensures that the developer/owner/purchaser will talk to the neighbors about their plans. The concerns raised in the draft regarding difficulty in contacting some property owners or language and cultural barriers were not sufficiently burdensome to warrant any changes according to the testimony, including the letters from districts 5 and 16. The two other letters discussed problems with the existing requirement from an applicant's point of view, and suggested possible alternatives that could be considered that would lessen the burden on the applicant.

Staff and the committee discussed issues with the existing consent petition requirements, and most of the committee is persuaded that some changes are in order. The committee agrees that the major advantage of requiring a consent petition is that it necessitates discussing the plans with the neighboring property owners and the larger neighborhood. But the Committee also recognizes that there are significant disadvantages to the current requirement for consent by the owners of two-thirds of the properties within 100 feet as an absolute prerequisite to get a hearing on an application. Among these disadvantages are:

1. The number of signatures can become quite high if, for example, there are condominium units within the 100 ft. radius of the property, or the site is quite large. At some point, it becomes unduly burdensome for an applicant to get a very large number of signatures just to get a hearing on the application. A typical 40 ft., 5000 sq. ft. single-owner lot surrounded by similar lots would normally have 10-12 properties within 100 ft. and would need somewhere in the range of 6 to 10 valid signatures on the consent petition, which only entitles them to get a hearing. With one or more large condominiums within 100 feet of the property, the total number of eligible signatures can exceed 100, requiring 67+ valid signatures in order to get a hearing.
2. In some areas, a number of surrounding properties may be owned by financial institutions located in distant cities (or countries), who, for whatever reason, may not be willing to sign a consent petition or even respond to a request. If the property is adjacent to publicly owned land, some City agencies are advised not to sign these petitions in order to avoid the implication that they have an official position on the issue, even though doing so would only provide an opportunity for a public hearing to determine the merits of the application. Other times, language or cultural barriers may make it difficult to obtain signatures. Under these circumstances, it may be unreasonable to deny an applicant a public hearing for an insufficient petition.
3. Finally, it is unreasonable that the lack of a few signatures can prevent an applicant from getting a public hearing even though a majority of the neighboring property owners have signed the petition. (With 10 property signatures needed, 3 holdouts can prevent a hearing, even though six owners have signed, in addition to the owner of the subject site.)

Another issue identified by staff and some members of the committee is the concern that denying applicants a hearing based on a lack of consent petition signatures may leave the City vulnerable to takings lawsuits if the property cannot be reasonably used for a conforming

purpose. For all these reasons, the committee has developed a revised alternative that reduces the number of signatures required on the consent petition from two-thirds to 51%. In addition, the committee recommends placing a numerical cap of 20 on the number of signatures needed to address those cases where there are an unusually large number of parcel signatures required. While these changes do not completely address the previously outlined disadvantages, they do ease the burden. They are also easier to administer than other alternatives that try to develop a fair and consistent policy about when to move ahead with a public hearing without a sufficient consent petition based on some kind of hardship finding.

### **Committee Recommendation**

The Neighborhood Planning Committee recommends that the Planning Commission approve the attached nonconforming use text amendments study and forward the amendments to the Mayor and City Council for their consideration.

## **Nonconforming Use Zoning Code Text Amendments Planning Commission Recommendation**

### **Amendments to Chapter 60. Zoning Code – General Provisions and Definitions; Zoning Districts and Maps Generally**

#### **Sec. 60.215. - N.**

~~*Nonconforming building.* A lawful building existing on the effective date of adoption (October 24, 1975) or amendment of this code but that does not now comply with the area, width, height, yard, percent of lot coverage, or other regulations concerning bulk or location on the lot, or spacing requirements from another use, off-street parking and loading requirements, or other regulations of the district in which it is located.~~

~~*Nonconforming use.* A lawful use existing on the effective date of adoption (October 24, 1975) or amendment of this code but that is not now permitted in the district in which it is located.~~

[These terms are more properly defined in Chapter 62, the chapter on nonconforming uses, and there is no need to repeat the definitions here.]

### **Amendments to Chapter 62. Zoning Code – Nonconforming Lots, Uses and Structures**

#### **Sec. 62.101. Intent.**

There exist within the districts established by this code and subsequent amendments lots, structures, and uses of land and structures that were lawful before this code was passed or amended that would be prohibited, regulated or restricted under the terms of this code or future amendments. It is the intent of this code to permit legal nonconforming lots, structures or uses to continue until they are removed and not replaced in accordance with Minnesota Statutes, section 462.357, subdivision 1e.

The code recognizes that in some circumstances allowing nonconforming uses to be changed to similar or less intense nonconforming uses, or allowing nonconforming uses to be reestablished in vacant buildings may benefit the city and surrounding neighborhood. Some buildings have a long useful life and allowing their continued occupancy for nonconforming uses can be more desirable than requiring them to be vacant if they cannot be converted to conforming uses. Consequently, the code allows conversion of nonconforming uses to similar nonconforming uses and allows the planning commission to reestablish nonconforming uses in vacant buildings if regulated so as to be compatible with the surrounding neighborhood.

The code ~~recognizes~~ provides, under limited circumstances, for that enlargements expansions or relocations of nonconforming uses ~~which improve the appearance and~~

~~functioning of the use can benefit the surrounding neighborhood. The code allows the enlargement of nonconforming uses when found to be compatible with the surrounding neighborhoods.~~

[Changes in Minnesota Statutes Sec. 462.357, subdivision 1e allow nonconforming structures to be replaced as well as uses to cease for up to one year. This insertion adds an explicit reference to the state statute guiding the ordinance, simplifies language, and uses similar wording to that found in Sec. 62.109(d). There has been confusion about the meaning of "enlargement." Further, the City Attorney has advised that 'expansion', which is the term used in the state statute, should be used instead of the term 'enlargement.' The term 'expansion' can cover increasing the size and volume of a structure, expansion of a use into more space within a structure, 'relocation' of a nonconforming use of land on a site or of a nonconforming use to another part of a building. The amendment simplifies duplicative language and is consistent with the language in Sec. 62.109(d).]

### **Sec. 62.102. Legal nonconforming uses and structures.**

~~For the purposes of this section, "use" means the principal purpose for which land or a building is being occupied. A use or structure will be presumed legally nonconforming if it can be demonstrated by clear and convincing evidence that prior to October 25, 1975, the use or structure was established, converted, or enlarged expanded and occupied pursuant to building permits issued by the city; if the use or structure was allowed in its location at the time it was established; or if it can be demonstrated by clear and convincing evidence that the particular use or structure had been in existence continuously for twenty (20) years prior to since December 13, 1956+1976. The burden of proof shall be on the property owner. For the purposes of this chapter, "use" means the principal purpose for which land or a building is being occupied. A legal nonconforming structure is one that lawfully existed when created but does not now comply with the area, width, height, yard, percent of lot coverage, or other regulations concerning bulk or location on the lot, off-street parking and loading requirements, or other regulations of the district in which it is located. The planning commission may approve permits granting legal nonconforming use status to uses or structures that do not meet these standards; as set forth in section 62.109(a) and (b).~~

[This amendment is required to comply with state law. Many uses can be established without building permits, and finding building permits can be impossible. If there is evidence that a use now nonconforming was established when the zoning code allowed that use or if the property was rezoned after the use was in existence so that it then became nonconforming, that use has been administratively approved as a legal nonconforming use. This is also the most logical location for the definition of a legal nonconforming structure.]

### **Sec. 62.103. Nonconforming lots.**

### **Sec. 62.104. Nonconforming uses of land.**

Nonconforming uses of land are subject to the following provisions:

- (a) A legal nonconforming use of land may continue unless it is discontinued for a period of more than one (1) year.
- (b) A legal nonconforming use shall not be ~~enlarged expanded~~ to a greater height ~~nor extended~~ to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this code unless the

planning commission approves a permit for the expansion as set forth in section 62.109(d).

- (c) A nonconforming use shall not be moved in whole or in part to any other portion of the lot unless the planning commission approves a permit for the relocation as set forth in section 62.109(d).

[In some instances moving the location of a nonconforming use of land to another portion of the lot may make sense and further the intent of the zoning code. Planning Commission review of the proposed move under the provisions of Sec. 62.109(d) can accommodate these circumstances.]

- (d) If ~~such a legal~~ nonconforming use of land ceases for any reason for a period of ~~ninety (90) days or more~~ than one (1) year, any subsequent use of such land shall conform to the regulations specified by this code for the district in which such land is located. ~~This is not intended for those uses which remain on the land but whose activity may cease for a period longer than ninety (90) days due to reasons associated with the customary operation of such use.~~

[State statute provides that nonconformities may continue as long as the nonconformity or occupancy is not discontinued for more than one year. Since the 90 day restriction is changed, the language regarding uses discontinued for 90 days is not needed. Intermittent uses should occur at least once a year to maintain legal nonconforming status.]

...

- (f) An existing off-street parking space for one- and two-family dwellings in a required front or side yard shall be considered a legal nonconforming use provided the parking space was established pursuant to a curb cut permit issued by the department of public works prior to October 45 25, 1975, and the parking space has ~~been~~ existed continuously since the permit was issued or it can be demonstrated by clear and convincing evidence that the parking space has been in existence and used continuously since October 25, 1975. The burden of proof shall be on the property owner.

[The incorrect date was inserted into the first date listed; the effective date of the rewritten zoning code was October 25, 1975.]

- (g) Any replacement of equipment shall not result in an increase in noise, vibration, glare, dust, or smoke.

[Ensures that nonconforming uses of land do not become more nonconforming through side effects of equipment replacement. Change is similar to language in the Minneapolis zoning code, Sec. 531.50.(b)(3).]

#### **Sec. 62.105. Nonconforming structures with conforming uses.**

Nonconforming structures with conforming uses are subject to the following provisions:

- (a) A legal nonconforming structure may continue, including through repair, replacement, restoration, maintenance, and improvement, unless the nonconformity is discontinued for a period of more than one (1) year.

[Added language conforms to the specific language in the state statute.]

- (b) A nonconforming structure may be enlarged physically expanded or altered so long as such enlargement expansion or alteration does not increase its nonconformity and the use in the expanded or altered area of the structure meets any zoning separation requirement. Accessory buildings may be added so long as they conform in all respects to the requirements of section 63.501, accessory buildings. A structure with a nonconforming setback shall not be expanded horizontally within the setback area, but may be expanded vertically within the setback area by up to ten (10) feet to a total of no more than two (2) stories, subject to the height limits of the district.

[Changes language to be consistent with the statute, but clearly states that other zoning requirements for use separations still apply. The amendment also accommodates the relatively frequent request to add a second floor to a 1 or 1½ story house, where meeting the required setback would present practical difficulties in design and construction of the expansion. This accommodation is not needed for horizontal expansions, which do not necessarily create a practical difficulty. If there is a practical difficulty, it can be addressed through a variance. The sentence on accessory buildings is not needed; it should be obvious that accessory structures need to meet code requirements for accessory structures.]

- (c) When a nonconforming structure is removed or destroyed by any means, including by fire or other peril, to an extent of more greater than sixty (60) fifty (50) percent of its estimated market value, as indicated in the records of the county assessor replacement cost, exclusive of the foundation, at the time of destruction, the removal or damage, and no building permit for repair or replacement of the structure has been applied for within one hundred-eighty (180) days of the removal or damage, it shall not be reconstructed except in conformity with the provisions of this code. A nonconforming residential garage, however, may be rebuilt in a rear yard with the same nonconforming setback within one (1) year of its destruction, provided that it is within the maximum height and size limits for an accessory structure outlined in section 63.501(e) and (d).

[For nonconforming structures with conforming uses, Minnesota Statute 462.357 Subdivision 1e (a) (2) applies. This statute allows nonconforming structures to be reconstructed if a building permit application has been made within 180 days. Since any nonconforming structure may be replaced if a building permit has been applied for within 180 days under this provision, there is no need for specific reference to residential garage replacement.]

#### **Sec. 62.106. Nonconforming uses of structures, or structures and land in combination.**

Nonconforming uses of structures, or structures and land in combination, are subject to the following regulations:

- (a) A Legal nonconforming use of structures, or structures and land in combination, may continue, including through repair, replacement, restoration, maintenance, and improvement of structures, unless the nonconformity is discontinued for a period of more than one (1) year.

[Amendment conforms to the specific language in the state statute.]

- (b) A legal nonconforming use may be changed to a use permitted in the district in which it is located or to a new nonconforming use if the new nonconforming use is ~~also listed in~~ on the same clause line of the use tables in Chapter 66 of the code as the most recent nonconforming use. A legal nonconforming use may be changed to a use permitted in the district in which the most recent nonconforming use is first allowed, or a ~~principle~~ principal use permitted in a district that is more restrictive than the district in which the most recent nonconforming use is first allowed, provided the planning commission approves a permit for the change as set forth in section 62.109(c).
- (c) The number of legal nonconforming uses on a zoning lot shall not be increased unless the planning commission approves a change of nonconforming use permit as set forth in section 62.109(c).
- (e-d) When a nonconforming use changes to a use permitted in the district in which the property is located, a nonconforming use may not thereafter be resumed. When a nonconforming use changes or to a use first permitted in a more restrictive district, the nonconforming uses first permitted in less restrictive districts shall not thereafter be resumed.

[Changes to (b) and (d), clarify existing confusing language and update language to be consistent with the 2004 reformatting of the zoning code, which replaced clauses with use tables. New (c) addresses requests to add related nonconforming uses to an existing use – for example dog day care to a pet grooming business or auto sales to an auto repair business. It has been unclear which section of Chapter 62 is best suited to address these types of applications, enlargement of nonconforming use or change of nonconforming use. After discussion, the recommendation is that the findings for change of nonconforming use are the most relevant.]

- (d e) A legal nonconforming residential use may be extended throughout any parts of a residential structure provided that no additional units are added that were manifestly arranged or designed for the use, but it shall not be ~~extended~~ expanded to occupy any land or a larger area of land outside the structure, unless the planning commission approves a permit for the expansion as set forth in section 62.109(d).

[Allows residential uses to add a bathroom or bedroom in a basement or attic. It also allows the Planning Commission to approve exceptions to this policy by approving a nonconforming use permit.]

- (e f) A nonconforming use shall not be moved to a new location on the zoning lot or enlarged expanded in any way, including increased cubic content, unless the planning commission approves a permit for an enlargement the expansion or relocation as set forth in section 62.109(d).
- (f) ~~A structure containing a nonconforming use shall not be moved to another location on its lot.~~

[Changes provide options for relocating nonconforming uses when it makes sense to do so.]

- (g) Any replacement of equipment shall not result in an increase in noise, vibration, glare, dust, or smoke.
- (g-h) When a legal nonconforming use is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days more than one (1) year, the building, or building and land in combination, shall thereafter be used in conformance with the regulations of the district in which it is located, unless the planning commission approves a permit to reestablish the nonconforming use as set forth in section 62.109(e). A residential building vacant for more than one (1) year may be re-established at the number of units for which it was originally constructed and used provided that it has not been physically converted to a fewer number of units. If the building has been converted to fewer units, the use may be re-established up to the reduced number of units.

[Amendment makes the code language the same as the statute. The change would also allow a vacant building to be restored to its original number of units or fewer without going through the public hearing process to re-establish the nonconforming use. Requiring a true duplex (for example) to go through the permit process is confusing to purchasers and neighbors. These uses are generally not controversial, and it makes no sense to require the owner to remove, at great expense, kitchens and other features that are part of the building's original construction.]

- (h-i) When a building structure containing a nonconforming use is removed or destroyed by any means, including by fire or other peril, to an the extent of more than sixty (60) fifty (50) percent of its replacement cost estimated market value as indicated in the records of the county assessor, exclusive of the foundation, at the time of the destruction, and no building permit for repair or replacement of the structure has been applied for within one hundred eighty (180) days of the time of the removal or damage, it shall not be reconstructed except in conformity with the provisions of this code.

[Minnesota Statutes allows nonconforming uses damaged more than 50% of their "market value" to be replaced as long as a building permit has been applied for within 180 days of the damage. "Replacement cost" and "market value" can differ significantly.]

- (i) ~~On a building devoted in whole or in part to any nonconforming use, work may be done on ordinary repairs, or on repair of walls, roofs, fixtures, wiring, or plumbing, provided that the cubic content of the building as it existed at the time of adoption or amendment of this code shall not be increased.~~

[These provisions moved to (a) and new (f) above.]

- (j) ~~Where nonconforming use status applies to a building and land in combination, removal or destruction of the building shall eliminate the nonconforming status of the land.~~

[This is already covered in new (h) and (i) above and is not needed.]

- (k-j) ~~Accessory off-street parking lots or structures~~ spaces or garages may be constructed on the site of a nonconforming use, so long as they comply with the requirements of sections articles 63.200, 63.300, and 63.501-500

and 65.900 and the setbacks required in the district where the use is first permitted.

[Clarification of the phrase "...parking lots or structures" was requested by DSI staff – is it 'parking lots and parking structures' or 'parking lots and any accessory structures'? The amendment limits this paragraph to off-street parking facilities and addresses other types of accessory structures in new (k) below. '63.300' is an article title, not a section. The other text additions provide a complete set of references to all parking regulations in the code.]

- (k) Any nonconforming residential use with four (4) or fewer dwelling units, may construct an accessory building other than a garage provided it complies with the requirements for accessory buildings and uses in articles 63.500 and 65.900. For all other nonconforming uses, an accessory building shall be considered an expansion of the nonconforming use and may be constructed provided it complies with articles 63.500 and 65.900 and the planning commission approves a permit for the expansion as provided in Sec. 62.109(d).

[New language clarifies how and when nonconforming uses may add accessory buildings. The exemption for buildings accessory to nonconforming residential uses is consistent with what is permitted by the Minneapolis zoning code.]

- (l) In any RM3, T4, OS, B1, B2, B3, I1, or VP district, nonconforming residential uses may be enlarged expanded, extended, or reconstructed or altered provided that in the B1, B2, B3, I1, and VP districts no additional dwelling units are added on the lot. Any business operated out of a residence must meet all home occupation standards. Expansion or reconstruction of Nonconforming residential uses must also in these districts shall meet the T2 height and minimum yard setback requirements for the use (except for lot area per dwelling unit) of section 66.230, residential district density and dimensional standards, for the district in which the use is first permitted and the requirements for off-street parking, section in article 63.200. Reconstruction of the uses must begin within one (1) year of the removal of the buildings.

[This eliminates redundant language, as a timeline for reestablishment is already provided for in Sec. 62.106(h). T4 needs to be added to this list because 1- and 2-family dwellings are nonconforming in T4. Multifamily residential uses are permitted in the RM3, T4, and OS districts, so adding dwelling units would make nonconforming residential uses more conforming and should not be restricted by this paragraph. The current reference to the requirements of section 66.230 "for the district in which the use is first permitted" requires RL One-family Large Lot setbacks for one-family residential. The T2 Traditional Neighborhood standards are a better fit for the higher density residential, commercial, and industrial districts to which this paragraph applies. Deletes the term "extended" which has no definition or clear meaning.]

- (m) In RL--R4 districts, existing legal nonconforming two-family residential uses may be enlarged expanded, extended, reconstructed or altered. The two-family uses expansion must meet the yard setbacks and the percentage of lot coverage requirements of the schedule of regulations, section 61.101, as required in the zoning district in which located or in the RT1 district, whichever is greater, the height limit of the district in which located, and the requirements for off-street parking, section in article

~~63.200. Reconstruction of the uses must begin within one (1) year of the removal of the buildings.~~

[Replaces outdated code reference with current reference, makes the regulation more workable, and eliminates redundant and potentially confusing language.]

- (n) In any residential district, existing commercial greenhouses may be ~~enlarged~~expanded, ~~extended~~, ~~reconstructed~~ or altered. The greenhouses must meet the height, yard setbacks, and percentage of lot coverage of section 66.230, residential district density and dimensional standards, for the district in which they are located and the requirements for off-street parking, section article 63.200. Reconstruction of the uses must begin within one (1) year of the removal of the buildings.

[All nonconforming uses may be reconstructed according to Minnesota Statute. This eliminates redundant language as a timeline for reconstruction is already provided for in Sec. 62.106.i.]

- (o) Existing auto body shops located in zones other than industrial zones shall be considered, for purposes of changes in nonconforming uses, as B3 uses. Auto body shops that are legally nonconforming in T2-T4 and B3 zoning districts may expand even though they are not permitted uses in these zoning districts. Auto service stations in T2, T3 and B2 zoning districts which remove their gas tanks and pumps will be regarded as legal nonconforming auto repair stations. Auto repair stations and auto specialty stores that are legally nonconforming in T2-T4 zoning districts may expand even though they are not permitted uses in these zoning districts.

- ~~(p) In RL-RT1 residential districts, a second one-family or two-family dwelling on a single lot is exempt from paragraph (h) above and may be reconstructed provided that the number of total dwelling units on the lot is not increased and the building is not enlarged or extended unless it meets the setback and lot coverage requirements for principal structures of the district. Reconstruction of the building must begin within one (1) year of the removal of the building, unless the board of zoning appeals grants an extension for reconstruction.~~

[This eliminates redundant language. The proposed amendments to Sec. 62.106(h) [new (i)] above would provide a timeline for reconstruction of such dwellings consistent with the state statute.]

- ~~(q)~~(p) Existing gun shops that are legally nonconforming, and are not pawn shops, shall be considered, for purposes of changes in nonconforming uses, as permitted uses and may expand even though gun shops are not permitted uses in the district, provided that the amount of floor area devoted to the display and sale of firearms is not increased and that any new public entrance is not located within one thousand (1,000) radial feet of any "protected use," as defined in section 65.520(a) of this Code.

- ~~(r)~~(q) Existing municipal yard waste sites that are legally nonconforming in the IR Light Industrial Restricted Districts may expand as a conditional use under the provision of section 61.501-61.504 and section 65.331 even

though new municipal yard waste sites are not permitted in IR light industrial restricted districts.

...

**Sec. 62.109. Nonconforming use permits.**

- (a) *Establishment of legal nonconforming use status.* The planning commission may grant legal nonconforming status to ~~the uses of or structures when such use fails to~~ that do not meet the standards of for legal nonconforming status in section 62.102 if the commission makes the following findings:

[Language changed to be consistent with Sec. 62.102.]

- ~~(1) The use occurs entirely within an existing structure;~~

[Deleting the language specific to 'structures' clarifies that the planning commission may grant legal nonconforming use status to outdoor uses as well as uses within a structure.]

- (21) The use or a nonconforming use of similar or greater intensity first permitted in the same clause of the zoning code district or in a more less restrictive zoning district has been in existence continuously for a period of at least ten (10) years prior to the date of the application.

[Clarifies language and corrects it to make sense and to make it consistent with how this section is actually administered.]

- (32) The off-street parking is adequate to serve the use;

- (43) Hardship would result if the use were discontinued;

- (54) Rezoning the property would result in "spot" zoning or a zoning inappropriate to surrounding land uses;

- (65) The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare;

- (76) The use is consistent with the comprehensive plan; and

- (87) A notarized petition of at least fifty-one (51) percent of the owners of the described parcels of real estate two-thirds of the property owners within one hundred (100) feet of the subject property, or twenty (20) signatures, whichever is less, has been submitted stating their support for the use.

The application for the permit shall include the petition, evidence of a ten-year period of existence, evidence that conversion of the use and structure would result in hardship, a site plan meeting the requirements of section 61.401, floor plans, and other information as required to substantiate the permit.

[The wording of the petition requirement has been changed to be clearer and consistent with how the requirement has been administered. 'Owners of the described parcels of real estate' clarifies that the petition is *not* based on land area or number of owners. Some parcels may have many owners; others only one.

The Planning Commission is also recommending changes to the petition requirements for the following reasons:

1. Change from two-thirds to 51% because a minority of property owners should not be able to block another property owner from even getting a hearing. Getting a majority to sign a petition in support of a nonconforming use permit can still be burdensome, even if few are opposed. Reasons for this include the difficulty in reaching owners (especially when property is owned by banks or commercial enterprises in other states), language and cultural barriers, and the fact that some owners are simply unresponsive or inclined not to sign anything.
2. Specifying an upper limit of twenty (20) keeps the petition requirement from being overly burdensome in the few cases where there are a very large number of parcels within 100 feet. A typical small lot has between 10 and 20 parcels within 100 feet, while large parcels and parcels near condos may have an extremely large number of parcels within 100 feet.
3. These changes also avoid depending on district councils to assist applicants, call meetings, or do other things the Zoning Code cannot require them to do.]

- (b) *Nonconforming commercial and industrial parking use.* The planning commission may grant legal nonconforming status to allow the use of land without completely enclosed buildings as a parking lot to serve abutting property in OS-B5 Business and IR-I1 industrial districts if the commission makes the following findings:

...

- (6) A notarized petition of at least fifty-one (51) percent of the owners of the described parcels of real estate ~~two-thirds of the property owners~~ within one hundred (100) feet of the subject property, or twenty (20) signatures, whichever is less, has been submitted stating their support for the parking lot.

[See drafting notes for changes to petition requirement in Sec. 62.109(a) above.]

- (c) *Change of nonconforming use.* The planning commission may allow a nonconforming use to change to another use permitted in the district in which the existing nonconforming use is first allowed, or a use permitted in a district that is more restrictive than the district in which the existing nonconforming use is first allowed, or permit another, related nonconforming use at the same location if the commission makes the following findings:

- (1) The proposed use is equally appropriate or more appropriate to the neighborhood than the existing nonconforming use;
- (2) The traffic generated by the proposed use is similar to that generated by the existing nonconforming use;

- (3) The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare; and
- (4) The use is consistent with the comprehensive plan.

The planning commission's findings may be a general rule or findings in a specific case.

[Clarifies language and responds to requests to add related nonconforming uses to an existing use.]

- (d) ~~Enlargement~~Expansion or relocation of nonconforming use. The planning commission may permit the ~~enlargement~~ expansion or relocation of a legal nonconforming use if the commission makes the following findings:

- (1) ~~In residential districts, t~~The enlargement~~expansion, or relocation~~ will not result in an increase in the number of dwelling units;
- (2) For ~~enlargements~~ expansion of a structure, the ~~enlargement~~ expansion will meet the yard, height and percentage of lot coverage requirements of the district;
- (3) The appearance of the ~~enlargement~~ expansion or relocation will be compatible with the adjacent property and neighborhood;
- (4) Off-street parking is provided for the ~~enlargement~~ expansion or relocation that meets the requirements of ~~section article 63.200~~ for new ~~structures~~ uses;
- (5) Rezoning the property would result in a "spot" zoning or a zoning inappropriate to surrounding land use; and
- (6) After the ~~enlargement~~ expansion or relocation, the use will not result in an increase in noise, vibration, glare, dust, or smoke; be detrimental to the existing character of development in the immediate neighborhood; or endanger the public health, safety, or general welfare;
- (7) The use is consistent with the comprehensive plan; and
- (8) A notarized petition of at least fifty-one (51) percent of the owners of the described parcels of real estate two-thirds of the property owners within one hundred (100) feet of the subject property, or twenty (20) signatures, whichever is less, has been submitted stating their support for the enlargement expansion or relocation.

[There has been confusion about the meaning of the term 'enlargement.' These changes replace the term 'enlargement' with the term 'expansion,' which is the term used in state statutes, and also permits relocation when that would create a better situation for both the use and the surrounding area. In non-residential districts, density is regulated by floor area ratio (FAR), not number of units. The wording of the petition requirement has been changed to be clearer and consistent with how the requirement has been administered. 'Owners of the described parcels of real estate' clarifies that the petition is *not* based on land area or number of owners. Some parcels may have many owners; others only one

The Planning Commission is also recommending changes to the petition requirements for the following reasons:

1. Change from two-thirds to 51% because a minority of property owners should not be able to block another property owner from even getting a hearing. Getting a majority to sign a petition in support of a nonconforming use permit can still be burdensome, even if few are opposed. Reasons for this include the difficulty in reaching owners (especially when property is owned by banks or commercial enterprises in other states), language and cultural barriers, and the fact that some owners are simply unresponsive or inclined not to sign anything.
2. Specifying an upper limit of twenty (20) keeps the petition requirement from being overly burdensome in the few cases where there are a very large number of parcels within 100 feet. A typical small lot has between 10 and 20 parcels within 100 feet. But large parcels and parcels near condos may have an extremely large number of parcels within 100 feet.
3. These changes also avoid depending on district councils to assist applicants, call meetings, or do other things the Zoning Code cannot require them to do.]

(e) *Reestablishment of nonconforming use.* When a legal nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of ~~three hundred sixty-five (365) days~~ more than one (1) year, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:

- (1) The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose;
- (2) The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use;
- (3) The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare; and
- (4) The proposed use is consistent with the comprehensive plan; and.
- (5) A notarized petition of at least fifty-one (51) percent of the owners of the described parcels of real estate ~~two-thirds of the property owners~~ within one hundred (100) feet of the subject property, or twenty (20) signatures, whichever is less, has been submitted stating their support for the use.

The application for the permit shall include the petition, a site plan meeting the requirements of section 61.401, floor plans, and other information as required to substantiate the permit.

[Replaces '365 days' with language from the statute: 'more than one (1) year.' The wording of the petition requirement has been changed to be clearer and consistent with how the requirement has been administered. 'Owners of the described parcels of real estate' clarifies that the petition is *not* based on land area or number of owners. Some parcels may have many owners; others only one

The Planning Commission is also recommending changes to the petition requirement for the following reasons:

1. Change from two-thirds to 51% because a minority of property owners should not be able to block another property owner from even getting a hearing. Getting a majority to sign a petition in support of a nonconforming use permit can still be burdensome, even if few are opposed. Reasons for this include the difficulty in reaching owners (especially when property is owned by banks or commercial enterprises in other states), language and cultural barriers, and the fact that some owners are simply unresponsive or inclined not to sign anything.
2. Specifying an upper limit of twenty (20) keeps the petition requirement from being overly burdensome in the few cases where there are a very large number of parcels within 100 feet. A typical small lot has between 10 and 20 parcels within 100 feet. But large parcels and parcels near condos may have an extremely large number of parcels within 100 feet.
3. These changes also avoid depending on district councils to assist applicants, call meetings, or do other things the Zoning Code cannot require them to do.
4. Finally, the petition requirement in (e)(5) could potentially box the city into the legal liability of a "taking" if inability to obtain the required signatures prevents the Planning Commission from holding a public hearing to determine if the proposed use is a reasonable or economical use of the property (which is, essentially, the definition of a "taking") Courts could require the City to buy the property or pay damages to the property owner. Reducing the petition requirement from 2/3 to 51% reduces the likelihood of this.

## Amendments to Chapter 64. Zoning Code – Signs

### Sec. 64.301. Nonconforming signs.

- (a) ~~No A nonconforming sign or sign structure shall not be enlarged or altered in a way which increases its nonconformity, except for temporary extensions on billboards as permitted in paragraph (c) of this section, and shall not be~~ Billboard extensions are not permitted. moved except to bring it into conformance with the provisions of this code. Ordinary repair, restoration, maintenance and improvement work may be done on any legal nonconforming sign. Addition of illumination shall require that a sign be brought into conformance with all requirements of this chapter.

[Changes wording to be more consistent with that in Chapter 62. Combines and moves language from former (c) and (d) below to (a), where it fits better. Removes prohibition of billboard extensions (see note below under new (c) for more explanation). Amendment also clarifies that addition of illumination is not considered "ordinary repair, restoration, maintenance and improvement."

- (b) ~~Should such~~ When a nonconforming sign or sign structure be is removed or destroyed by any means, including by fire or other peril, to an the extent of greater than fifty-one (51) (50) percent of its replacement cost-estimated market value, as indicated in the records of the county assessor at the time of the removal or damage, and no building permit for its repair or replacement has been applied for within one hundred eighty (180) days of the removal or damage, it shall not be reconstructed except in conformity with the provisions of this chapter. When use of a nonconforming sign is discontinued (including the lack of copy) for a period of more than one (1)

year, it shall not be reused except in conformance with the provisions of this code.

[Makes the language for destruction or removal of signs and sign structures consistent with the state statute that allows nonconforming structures (signs) damaged by fire or other peril to an extent greater than 50% of their market value to be replaced as long as a building permit has been applied for within 180 days of when the sign incurred damage. The statute also changed "replacement cost" to "market value. The proposed language is made consistent with that in Chapter 62, Nonconforming Lots, Uses, and Structures as well. Clarifies that lack of copy on a sign can be used to determine discontinuance of a nonconforming sign.]

~~(e) — Should such sign or sign structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved.~~

~~(d) — No existing sign devoted to a use not permitted by the zoning code in the zoning district in which it is located shall be enlarged, extended or moved except in changing the sign to a sign permitted in the zoning district in which is it located.~~

[Paragraphs (c) and (d) have been included in the general regulation regarding nonconforming signs and sign structures in paragraph (a), which adds simplicity and clarity.]

~~(e) — When a structure loses its nonconforming status, as set forth in the zoning code, section 62.106(g) all signs devoted to the structure shall be removed and all signs painted directly on the structure shall be repainted in a neutral color or a color which will harmonize with the structure.~~

~~(f) — Signs may be repainted, reposted or replaced when there is a change of any nonconforming use as set forth in the zoning code, section 62.105(c).~~

[Paragraphs (e) and (f) are not needed since the intent of the regulations is already covered by Sec. 64.205, Abandoned signs: *Any business sign which advertises, identifies or pertains to an activity no longer in existence shall be removed by the owner of the property within thirty (30) days from the time the activity ceases existence by removing the sign face, painting the sign face a neutral color or installing blank sign face panels. This provision does not apply to seasonal activities during the regular periods in which they are closed. If the sign face is not re-used within one (1) year, the remaining sign structure must be removed unless the zoning administrator grants an extension subject to the owner submitting a statement of intent and a reasonable time line for re-use of the sign structure.* An amendment will also be proposed to Sec. 64.205 to address an exception for historic signs painted on historic building walls as part of a minor text amendment package.]

(f)(c) Any rectangular billboard may contain extensions, cutouts or top lettering which occupy a total area not in excess of fifteen (15) percent of the area of the basic advertising sign and form an integral part of the design thereof; and provided further, that no such extension, cutout or top lettering may project more than six (6) feet from the top, eighteen (18) inches from either side or fifteen (15) inches from the bottom of the basic rectangular advertising message. The area of an extension, cutout or top lettering shall be deemed to be the area of the smallest rectangle into which such extension, cutout or top lettering will fit. A sign permit is required for a temporary billboard extension. Temporary extensions shall

be completely removed not later than ninety (90) days after installation and the total combined period of temporary extensions for a sign face shall not exceed one hundred eighty (180) days per year.

[Changes to (a) and new (c) reflect the decision of the Eighth Circuit Court of Appeals filed August 25, 2010, that found the prohibition against billboard extensions adopted by the City Council under CF #06-160 to be unenforceable. The amendment simply reinstates language that was in the code previously.]

## ARTICLE VI. 64.600. SPECIAL SIGN DISTRICTS

*Special district sign plans are found in Sections 64.610 – 64.750. Language pertaining to nonconforming signs should be deleted from these sections because the text either duplicates the provisions and regulations for nonconforming signs in section 64.301 and is therefore redundant or is inconsistent with Minnesota Statutes. Local zoning provisions for continuation of structures and uses made nonconforming by adoption of an additional zoning control are governed by, and must be consistent with, the provisions in Minnesota Statutes Sec. 462.357 for such legal nonconforming uses. Minnesota Statutes sec. 642.357, Subd. 1e, specifically allows legal nonconforming uses to “be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless: (1) the nonconformity or occupancy is discontinued for a period of more than one year; or (2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, as indicated in the records of the county assessor at the time of the damage, and no building permit has been applied for within 180 days of when the property is damaged.”*

*The deleted language is essentially the same for all special sign districts, with language variation for Sec. 64.630, West Side special district sign plan and Sec. 64.770, Downtown area special district sign plan, while the content remains the same.*

### **Sec. 64.610. Sunray-Battlecreek-Highwood, district one community council special district sign plan.**

....  
(e) ~~Nonconforming signs. Regulation of nonconforming signs within the Sunray-Battlecreek-Highwood, district one community council special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:-~~

(1) ~~No nonconforming sign shall be:~~

a. ~~Altered or enlarged in any way; or~~

b. ~~Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or~~

- c. — Relocated to any other location in the Sunray-Battlecreek-Highwood, district one community council special sign district; or
  - d. — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or
  - e. — Maintained through replacement of structural elements.
- (2) — A nonconforming sign shall be immediately removed from the Sunray-Battlecreek-Highwood, district one community council special sign district at the cost of the owner if:
- a. — It is an imminent danger to life or property; or
  - b. — It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
  - c. — Use of the sign has been discontinued for a period of three (3) consecutive months.

~~(e)(g)~~ *Sign permits; administration. ....*

#### **Sec. 64.620. Greater Eastside Area special district sign plan.**

....

~~(e) — Nonconforming signs. Regulation of nonconforming signs within the Greater Eastside Area special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:~~

- (1) — No nonconforming sign shall be:
  - a. — Altered or enlarged in any way; or
  - b. — Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or
  - c. — Relocated to any other location in the Greater Eastside Area special sign district; or

- d. — ~~Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or~~
- e. — ~~Maintained through replacement of structural elements.~~
- (2) — ~~A nonconforming sign shall be immediately removed from the Greater Eastside Area special sign district at the cost of the owner if:~~
  - a. — ~~It is an imminent danger to life or property; or~~
  - b. — ~~It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or~~
  - e. — ~~Use of the sign has been discontinued for a period of three (3) consecutive months.~~

~~(e)(f)~~ *Sign permits; administration. ....*

**Sec. 64.630. West Side special district sign plan.**

- ....
- (c) *Advertising sign restrictions.* Advertising signs shall not be permitted within the sign plan district except signs on transit shelters and courtesy benches licensed or franchised by the city. ~~Construction, erection, replacement, or renovation of advertising signs shall not be permitted. Existing, nonconforming, advertising signs shall:~~
  - (1) — ~~Be immediately removed, at the owner's expense, from the special sign district if:~~
    - a. — ~~It is an imminent danger to life or property; or~~
    - b. — ~~It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or~~
    - e. — ~~Use of such sign, signified by a lack of advertising message, has been discontinued for a period of three (3) consecutive months.~~
  - (2) — ~~Not be:~~
    - a. — ~~Altered or enlarged in any way; or~~
    - b. — ~~Replaced by another nonconforming sign; or~~

- e. — Relocated to any other location in either this district or the Smith Avenue special sign districts; or
- d. — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
- e. — Maintained through replacement of structural elements.

(c)(d) *Administration and enforcement.* ....

**Sec. 64.640. Dayton's Bluff special district sign plan.**

....

(e) — *Nonconforming signs.* Regulation of nonconforming signs within the Dayton's Bluff special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:-

(1) — No nonconforming sign shall be:

- a. — Altered or enlarged in any way; or
- b. — Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or
- c. — Relocated to any other location in the Dayton's Bluff special sign district; or
- d. — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or
- e. — Maintained through replacement of structural elements.

(2) — A nonconforming sign shall be immediately removed from the Dayton's Bluff special sign district at the cost of the owner if:

- a. — It is an imminent danger to life or property; or

- b. — It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
- c. — Use of the sign has been discontinued for a period of three (3) consecutive months.

(e)(f) *Sign permits; administration. ....*

**Sec. 64.660. North End/South Como special district sign plan.**

....

(e) — ~~Nonconforming signs.~~ Regulation of nonconforming signs within the North End/South Como special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:

(1) — No nonconforming sign shall be:

- a. — Altered or enlarged in any way; or
- b. — Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or
- c. — Relocated to any other location in the North End/South Como special sign district; or
- d. — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or
- e. — Maintained through replacement of structural elements.

(2) — A nonconforming sign shall be immediately removed from the North End/South Como special sign district at the cost of the owner if:

- a. — It is an imminent danger to life or property; or
- b. — It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or

- e. — Use of the sign has been discontinued for a period of three (3) consecutive months.

(e)(g) *Sign permits; administration. ....*

**Sec. 64.670. Thomas/Dale district 7 special district sign plan.**

....

- (f) — ~~Nonconforming signs.~~ Regulation of nonconforming signs within the Thomas/Dale district 7 special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:

- (1) — No nonconforming sign shall be:

- a. — Altered or enlarged in any way; or
- b. — Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or
- c. — Relocated to any other location in the district 7 special sign district; or
- d. — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or
- e. — Maintained through replacement of structural elements.

- (2) — A nonconforming sign shall be immediately removed from the district 7 special sign district at the cost of the owner if:

- a. — It is an imminent danger to life or property; or
- b. — It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
- c. — Use of the sign has been discontinued for a period of three (3) consecutive months.

(f)(g) *Administration and enforcement. ....*

**Sec. 64.710. Hamline Midway special district sign plan.**

....

~~(f) — Nonconforming signs. The regulation of nonconforming signs shall be pursuant to the provisions of article iii, nonconforming signs, of this chapter.~~

~~(f)(g)~~ *Administration and enforcement.* Whenever a permit request for an advertising sign in the Hamline Midway special sign district is requested, such permit shall not be issued unless the plans for the advertising sign have been approved by the zoning administrator as in compliance with this supplement and other provisions of chapter 6664, signs.

**Sec. 64.720. Saint Anthony Park special district sign plan.**

....

~~Signs within the Saint Anthony Park special sign district which lawfully existed prior to the adoption of this sign plan and which would be prohibited, regulated or restricted under the provisions of this sign plan or amendments hereto, may continue to exist as legal nonconforming signs under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:~~

~~(1) — No nonconforming sign shall be:~~

~~(a) — Altered or enlarged in any way; or~~

~~(b) — Replaced by another nonconforming sign, though a change in the message on a nonconforming sign will not be deemed to be a replacement; or~~

~~(c) — Relocated to any other location in the Saint Anthony park special sign district; or~~

~~(d) — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or~~

~~(e) — Maintained through replacement of structural elements; or~~

~~(2) — Any nonconforming sign shall be immediately removed from the Saint Anthony Park special sign district at the cost of the owner if:~~

~~(a) — It is an imminent danger to life or property; or~~

(b) — ~~It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss; or~~

(c) — ~~Use of such sign has been discontinued for a period of three (3) consecutive months.~~

....

**Sec. 64.730. Merriam Park special district sign plan.**

....

(e) — ~~Nonconforming advertising signs. Signs within the Merriam Park special district which lawfully existed prior to the adoption of this sign plan by the city council, and which would be prohibited, regulated or restricted under the provisions of this sign plan or amendments hereto, may continue to exist as legal nonconforming signs under the provisions of section 64.300, nonconforming signs, subject to the following additional requirements:~~

(1) — ~~No nonconforming advertising signs shall be:~~

a. — ~~Altered in any way, other than changing the message on a painted or printed sign;~~

b. — ~~Replaced by another nonconforming sign;~~

c. — ~~Relocated to any other location in the Merriam Park special district;~~

d. — ~~Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its display surface, as determined by the city; or~~

e. — ~~Maintained through replacement of structural elements.~~

(2) — ~~Any nonconforming advertising sign shall be immediately removed from the Merriam Park special district at the cost of the owner:~~

a. — ~~If it incurs damage in an amount exceeding fifty (50) percent of its display surface, as determined by the city; or~~

b. — ~~If use of such sign has been discontinued for a period of three (3) consecutive months.~~

**Sec. 64.735. Snelling Hamline special district sign plan.**

....

(e) ~~Nonconforming signs.~~ Nonconforming signs within the Snelling-Hamline special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:-

(1) No nonconforming sign shall be:

- a. Altered or enlarged in any way; or
- b. Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or
- c. Relocated to any other location in the Snelling-Hamline special sign district; or
- d. Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or
- e. Maintained through replacement of structural elements.

(2) A nonconforming sign shall be immediately removed from the Snelling-Hamline special sign district at the cost of the owner if:

- a. It is an imminent danger to life or property; or
- b. It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
- c. Use of the sign has been discontinued for a period of three (3) consecutive months.

~~(e)(f)~~ Sign permits; administration. ....

#### **Sec. 64.740. Macalester-Groveland special district sign plan.**

....

(e) ~~Nonconforming signs.~~ Regulation of nonconforming signs within the Macalester-Groveland special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under

~~the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:-~~

- ~~(1) — No nonconforming sign shall be:
  - a. — Altered or enlarged in any way; or
  - b. — Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or
  - c. — Relocated to any other location in the Macalester-Groveland special sign district; or
  - d. — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or
  - e. — Maintained through replacement of structural elements.~~
- ~~(2) — A nonconforming sign shall be immediately removed from the Macalester-Groveland special sign district at the cost of the owner if:
  - a. — It is an imminent danger to life or property; or
  - b. — It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
  - c. — Use of the sign has been discontinued for a period of three (3) consecutive months.~~

~~(e)(g) Sign permits; administration. ....~~

**Sec. 64.755. Shepard Davern special district sign plan.**

~~(e) — *Nonconforming signs.* Regulation of nonconforming signs within the Shepard Davern special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:-~~

- ~~(1) — No nonconforming sign shall be:~~

- a. — ~~Altered or enlarged in any way; or~~
  - b. — ~~Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or~~
  - c. — ~~Relocated to any other location in the Shepard Davern special sign district; or~~
  - d. — ~~Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or~~
  - e. — ~~Maintained through replacement of structural elements.~~
- (2) — ~~A nonconforming sign shall be immediately removed from the Shepard Davern special sign district at the cost of the owner if:~~
- a. — ~~It is an imminent danger to life or property; or~~
  - b. — ~~It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or~~
  - c. — ~~Use of the sign has been discontinued for a period of three (3) consecutive months.~~

~~(e)(g)~~ *Sign permits; administration. ....*

**Sec. 64.770. Downtown area special district sign plan.**

- ....
- (c) Within the downtown special sign district, no advertising signs shall be subject to the following restrictions:
- (1) — ~~No advertising signs shall be permitted except signs on transit shelters and courtesy benches licensed or franchised by the city;.~~
  - (2) — ~~Advertising signs within the downtown special sign district which lawfully existed prior to the adoption of this special sign plan and which would be prohibited, regulated, or restricted under the provisions of this sign plan or amendments hereto, may continue to exist as legal nonconforming signs under the provisions of Legislative Code section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:~~
    - a. — ~~No nonconforming advertising sign shall be:~~

1. ~~Altered or enlarged in any way; or~~
  2. ~~Replaced by another nonconforming advertising sign, though a change in the message on a nonconforming advertising sign will not be deemed to be a replacement; or~~
  3. ~~Relocated to any other location in the downtown special sign district; or~~
  4. ~~Reconstructed after incurring damage to the advertising sign display surface or advertising sign structure in an amount exceeding fifty one (51) percent of the replacement cost of the advertising sign display surface or fifty one (51) percent of the replacement cost of the advertising sign structure at the time of loss, as determined by the zoning administrator; or~~
  5. ~~Maintained through replacement of structural elements.~~
- b. ~~Any nonconforming advertising sign shall be immediately removed from the downtown special sign district at the cost of the owner if:~~
1. ~~It is deemed unsafe or hazardous by the zoning administrator; or~~
  2. ~~The advertising sign face or advertising sign structure sustains damage in an amount exceeding fifty one (51) percent of the replacement cost of the advertising sign display surface or advertising sign structure at the time of loss; or~~
  3. ~~Use of such advertising sign has been discontinued for a period of three (3) consecutive months.~~
- ....

city of saint paul  
planning commission resolution  
file number \_\_\_\_\_  
date \_\_\_\_\_

NONCONFORMING USE ZONING TEXT AMENDMENTS

WHEREAS, the City of Saint Paul has established zoning definitions and regulations for nonconforming lots, uses, and structures in Chapters 60 and 62 and for nonconforming signs in Chapter 64, Article III of the Legislative Code; and

WHEREAS, amendments to Minnesota Statutes, Section 462.357, subdivision 1e, in 2004 and 2005, changed the laws for replacement and restoration of nonconforming uses; and

WHEREAS, the Planning Commission, in Resolution 10-43, initiated a zoning study to amend Saint Paul's nonconforming use regulations in order to achieve statutory compliance, clarify and update language, and simplify existing regulation where possible; and

WHEREAS, the Planning Commission conducted a public hearing on a draft of the nonconforming use text amendments on April 20, 2012, notice of which hearing was published in the *Legal Ledger* and was sent to the City's Early Notification System; and

WHEREAS, the Commission has revised the proposed amendments based on the oral and written testimony received at the public hearing, the recommendations of staff, and extensive discussion;

NOW, THEREFORE, BE IT RESOLVED, under the provisions of Section 61.801(b) of the Legislative Code, that the Planning Commission recommends to the Mayor and City Council the attached amendments to the zoning code regarding definitions in chapter 60, nonconforming lots, uses, and structures in Chapter 62 and nonconforming signs in Chapter 64.

moved by \_\_\_\_\_  
seconded by \_\_\_\_\_  
in favor \_\_\_\_\_  
against \_\_\_\_\_